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At the Supreme Court
Sitting as the High Court of Justice

HCJ 176/12

- In the matter of:
1. _____ **al-Batash, ID No.** _____
 2. _____ **'Anati, ID No.** _____
 3. **Adi Lustigman, ID No.** _____
 4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Sigi Ben Ari (Lic. No. 37566) and/or Noa Diamond (Lic. No. 454665) and/or Att. Ido Bloom (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Daniel Shenhar (Lic. No. 41065) and/or Elad Cahana (Lic. No. 49009) and/or Nimrod Avigal (Lic. No. 51583), and/or Bejamin Agsteribbe (Lic. No. 58088) and/or Talia Yehuda (Lic. No. 56918) Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Senior Division Manager, Population Authority, Ministry of Interior**
2. **General Manager of the Employment Service**
3. **Supervisor of the Government Housing Administration, Accountant General, Ministry of Finance**

All represented by the State Attorney General

The Respondents**Petition for Order Nisi**

A petition for an *order nisi* is hereby filed which is directed at the Respondents ordering them to appear and show cause:

- A. Why they should not find a solution that will prevent the heavy load and intolerable congestion with which those visiting the Population Administration Office in East Jerusalem cope daily.
- B. Why they should not separate the Population Administration Office in East Jerusalem from the Employment Service Office in East Jerusalem, in a manner in which the Employment Service shall be transferred to a different building and the current building in Wadi Joz, shall serve solely those visiting the Population Administration.
- C. Alternatively, why the Employment Service's automated identification terminals should not be placed outside the building in Wadi Joz, so that the vast majority of visitors to the Employment Service would not be forced to stand in line in the entrance to the building, where those visiting the Population Administration stand.
- D. Why they should not install restrooms and drinking fountains in the waiting area at the entrance to the office.
- E. Why they should not put benches in the waiting area in the entrance to the office, so that at the very least the elderly and handicapped shall be able to stay seated while waiting.

The Facts**The Parties**

1. Petitioner 1 is a resident of East Jerusalem, who requires the services of the Population Administration in East Jerusalem from time to time.
2. Petitioner 2 is a resident of East Jerusalem, who requires the services of the Population Administration in East Jerusalem from time to time.
3. Petitioner 3 is an attorney who represents residents in cases against the Population Administration Office in East Jerusalem and accompanies them to the office frequently.

4. Petitioner 4 (hereinafter: **HaMoked: Center for the Defence of the Individual or HaMoked**) is a registered non-profit organization based in Jerusalem, which works to advance Palestinian human rights in the Occupied Palestinian Territories (OPT) and in East Jerusalem.
5. Respondent 1 is a Senior Division Manager in the Population Administration on behalf of the Minister of Interior, who is responsible, inter alia, for managing the population registry, regulating the status of Israeli residents, issuing visas and approving applications for family unification in accordance with the Entry into Israel Law 5712 – 1952 and the Citizenship and Entry into Israel Law (Temporary Order), 5763 – 2003.
6. Respondent 2 is the General Manager of the Employment Service, a statutory corporation that was established under the Employment Services Law 5719 – 1959, and is responsible, inter alia, for employment placement and mediation services.
7. Respondent 3 is the official appointed by the Accountant General in the Ministry of Finance to oversee the Government Housing Administration, which is responsible for funding and managing housing assets belonging to governmental authorities.

The Special Status of the Population Administration Office in East Jerusalem

8. The Population Administration Office in East Jerusalem provides residents of East Jerusalem with services concerning daily, basic and essential affairs related to the resident's fundamental rights such as the right to a family life, the right to freedom of movement, etc.
9. The Population Administration Office in East Jerusalem is unlike any other Population Administration Office. This is so, since in order to reside in Jerusalem legally and in order to exercise their rights, residents of East Jerusalem are required to come to the Population Administration Office frequently, much more often than citizens. The services provided in the office require the elderly, children and infants to visit it as well.
10. A number of examples follow: A resident is required to renew his ID card every few years, compared to a citizen, who can use the same ID card for many years. In order to register his children in the population registry, a resident is required to prove his center of life, a process that usually requires visiting the office a number of times. On the other hand, a citizen can register his children quickly and easily, even by mail. A citizen is issued a passport valid for 10 years which allows him to leave the country, compared to a resident who requires a Laissez Passer which is usually valid for one to two years. In family unification procedures, and mainly following the enactment of the Citizenship and Entry

into Israel Law (Temporary Order) 5763 - 2003, couples undergoing a family unification procedure are required to come to the office frequently, in order to prove their center of life again and again, to submit a large number of documents and comply with the office clerks' stringent demands. In fact, residents are dependent upon the proceedings that take place in the office throughout their life time.

11. Therefore, residents of East Jerusalem depend and rely on the services of the Population Administration Office in a profound, daily and perpetual manner.

The Background for the Petition

12. This petition deals with the conditions under which residents are received at the Population Administration Office in East Jerusalem (Hereinafter: **the office**), particularly with waiting conditions outside the office. This painful matter has already been brought before this Honorable Court twice and there is no choice but to bring it before the Court once again.
13. The physical conditions and the manner of treatment in the East Jerusalem Population office were first brought before the Court some 12 years ago in H CJ 4892/99 **Jaber et al. v. Ministry of Interior et al.**(hereinafter: **The First Petition**). During the course of the proceedings, the conditions were improved slightly and the Respondent stated that he would put up an awning at the site and transfer the office to a new and appropriate location as quickly as possible. In light of this statement, the petition was denied on June 6, 2001.
14. The second time the conditions in the Population Administration Office in East Jerusalem were brought before the Court was about 8 years ago in H CJ 2783/03 **Jabra et al v. Minister of Interior et al.** (hereinafter: **The Second Petition**). The petition focused on the claim that the Respondent was not fulfilling his undertakings regarding the improvement of conditions in the office and the relocation to a new building.
15. In the second petition the Court issued an Order Absolute, with the Respondent's consent, and ordered that the office be moved to the Mamounia Complex and opened to the public within nineteen months, that office staff be increased and that office hours be extended.

Waiting Conditions in the New Office

16. The facts described in the following chapter are based on affidavits given by Petitioners 1 – 3, testimonies given by visitors to the office and HaMoked employees and on observations made by HaMoked employees while

accompanying applicants to HaMoked to the office. This chapter is supported by affidavits given by Petitioners 1 -3 and the affidavits of Ms. _____ Rashek, Att. Noa Diamond and Ms. Amal 'Abass.

Affidavit of Petitioner 1, Ms. _____ al-Batash, is attached and marked **P/1**.

Affidavit of Petitioner 2, Mr. _____ 'Anati, is attached and marked **P/2**.

Affidavit of Petitioner 3, Attn Adi Lustigman, is attached and marked **P/3**.

Affidavit of Mrs. _____ Rashek dated May 16 2010 is attached and marked **P/4**.

Affidavit of Attn. Noa Diamond dated June 12 2011 is attached and marked **P/5**.

Affidavit of Ms. Amal 'Abass dated June 12, 2011 is attached and marked **P/6**.

Affidavit of Attn. Noa Diamond dated June 16, 2011 is attached and marked **P/7**.

17. Prior to describing the waiting conditions at the Population Administration Office in East Jerusalem in detail, we shall quote some of the serious comments made by Petitioner 1 in her affidavit:

I work and spend much time in West Jerusalem with Jews and Arabs. I have never encountered such hostile treatment as I encounter when entering the Population Administration Office in East Jerusalem. I believe that this treatment causes the visitors to the Population Office to hate the state and the entire establishment.

And from the affidavit of Petitioner 3, Att. Adi Lustigman:

I would like to mention that I visit Population Administration offices throughout Israel including those in Tel Aviv, Ramat Gan, Hertzelia, Rehovot, Ramle, Hadera, Rishon Letzion, and of course West Jerusalem. Nowhere have I encountered lines even similar to those at the entrance to the Population Administration Office!

18. The current office, located at 49 Wadi Joz St., was opened to the public in 2006. At first the building served the population office alone, but as of February 2007, the Employment Services Office, serving residents of East Jerusalem has also been housed there. As a result, visitors to the two offices form a single line up at the end of which, before entering the building, security checks are conducted.

19. Entrance into the waiting area is via a passageway between two electronic turnstiles that are 2.20 meters tall (hereinafter: **the turnstiles**) and are controlled and operated from a distance by security guards positioned in a sealed booth located nearby. After passing the turnstiles, those seeking the services of the office enter a covered waiting corridor, that is 30 meters long, which finally leads to the security check.



In the photo: The entrance to the covered waiting corridor through the electronic turnstiles (The photos on this page were taken by the undersigned).

20. The width of the covered waiting corridor is about 3 meters. A long iron bar splits it into two sections, forming two lines, one for women and one for men. Walls that are 4.5 meters high are located on both sides of the corridor. On the upper part of the wall to the right, right under the ceiling, there are a number of narrow windows, about 50 centimeters wide.



A view of the covered waiting corridor through the turnstiles.

21. When the many people visiting the Population Office and the Employment Office wait in this narrow corridor and beyond it, the density and pressure are intolerable and the waiting period becomes a difficult, humiliating and even dangerous experience. We shall explain.
22. At times the line-up for the Office is extremely long and it may take a number of hours to get into the office. For example, on May 16, 2010, Mrs. Rashek and her husband, who had an appointment in order to extend the validity of their ID cards, waited in line at the entrance to the Office for two hours. On June 12, 2011 Att. Diamond waited in line for 4 hours. On June 16, 2011, Att. Diamond waited in line for one hour and 45 minutes, as she had been summoned to a hearing on the same day. Petitioner 1 waited about 5 hours (!) on July 7, 2011, before entering the Office.
23. At times, as a result of its length, the line extends beyond the turnstiles and the covered area, so that those waiting are exposed to the cold and rain in the winter and the searing sun in the summer. Mrs. Rashek's husband, who suffers from heart disease and was released from hospital one day before coming to the Office, stood in line for about an hour and a half in the sun, in the open line beyond the turnstiles. On June 6, 2011, Att. Diamond also stood in line under the searing sun outside the turnstiles for an hour and a half.



A photo of the line winding around the building before the entrance to the turnstiles (photographed by Petitioner 3 on January 3, 2011)

24. The following is a description of standing in line beyond the turnstiles in Petitioner 1's affidavit:

I arrived at the office before 9:00 AM. The line outside the turnstiles was very long and wined around the building for about 50 meters. It was very hot outside, the sun blazed. I put a newspaper over my head to protect myself from the sun. Elderly people, women and babies were standing in line. The line moved slowly. Only at 11:45 AM, after around 3 hours of standing in the sun did I reach the entrance to the turnstiles. As a result of the congestion and frustration, people began fighting over who would pass through the turnstiles and into the covered line. But at this stage, the security guards only agreed to let those visiting the Employment Office in. The people visiting the Population Office were allowed in slowly later.

25. And the following Petitioner 3's account:

Usually the congestion outside the Wadi Joz office is such that it is impossible to reach the turnstiles and enter the waiting corridors where men and women are separated. The

days that are most crowded are usually the joint reception days for the Ministry of Interior and the Employment Office. The waiting corridors do not suffice for the number of people visiting, in a manner which forces dozens and maybe even more than 100 people, including elderly people, pregnant women, babies and infants, to congregate outside of the turnstiles and the covered line while suffering from terrible congestion, with no shed to protect them from the rain or the blazing sun, with no benches to sit on, with no drinking fountains. The congestion inside the covered line after passing the turnstiles is intolerable on such days.

26. On many occasions, the security guards prevent those waiting outside from passing through the turnstiles into the covered area for no apparent reason, despite the fact that there is room in the waiting corridor. Section 9 of Mrs. Rashek's affidavit states that on a very hot day, the people waiting outside the turnstiles were not allowed to enter the covered line, despite the fact that there was room in the corridor.
27. Because of the congestion, people are shoved into the turnstiles that separate the uncovered line and the covered line and as the turnstiles are operated from a distance, those waiting near them and inside them may be harmed or crushed. The following was stated in Section 8 of Ms. Abas' affidavit:

People got stuck and trampled over while passing through the turnstile. One woman who was crushed while passing through the turnstile fainted immediately when she got out of it. I rushed to help her and give her water under conditions of terrible overcrowding.
28. In many cases, those visiting the Population Office are entirely prohibited from entering and only visitors to the Employment Office are allowed in and are called to the security check counter. This can continue for an hour or more (Sections 3 and 7 of Att. Diamond's affidavit dated June 12 2011, Section 7 of Ms. Abas' affidavit, Section 5 of Petitioner 1's affidavit).
29. After passing through the turnstiles, the visitors stand in a crowded line, under intolerable conditions, at times for more than an hour, before reaching the security counter. There is no room to sit in the crowded corridor; there are no drinking fountains and of course, there is no restroom. The closed and crowded corridor looks more like a cattle pen.
30. The following is a description of the intolerable waiting conditions in the corridor given in Att. Diamond's affidavit dated June 12, 2011:

We stood in the “sleeve” between the turnstile and the security check for an additional two and a half hours. The sun may no longer bearing down on us as before, , but the congestion and the lack of air were terrible. In addition, some of the people inside the sleeve were smoking, a fact that caused an even greater feeling of suffocation. Two young women fainted, apparently because of the heat and the lack of oxygen. I can testify that I am a young and healthy woman - I do not know what pregnant women, the elderly or sick people do. Little children waiting in line needed to go to the bathroom and of course there was no solution for them.

And from Ms. Abas’ affidavit:

One woman who was in the advanced stages of pregnancy found it difficult to stand and leaned on me. I asked for a chair for her, they said that there was none. An elderly man who was sitting on a chair got up and let the woman sit down despite the fact that it was evident that standing up was difficult for him and he was using a cane.

After a few minutes, I saw another woman who was about to faint and who started to throw up by the wall. I asked the guard to bring her a chair, but he told me that he did not have one. There was a female guard next to him who said with nervous sarcasm that soon everyone would want chairs. I replied that if she had to stand in line for four hours she would also want a chair.

I saw a chair by the female guard and asked the guard to bring it. The guard said that it was not theirs. I asked the guard to let the woman into the bathroom and he told me that there was no bathroom. The guard ultimately gave the woman the chair and let her in after a few minutes.

One of the guards constantly screamed at the women in Hebrew to stand in two lines.

And from Petitioner 1’s affidavit:

There was a lot of congestion under the covered line . Two women fainted. We tried getting closer to the security personnel in order to inform them and ask for help but they screamed at us rudely and would not let us get any closer or talk to them. It was a difficult and inhumane situation. Two

more hours went by before I reached the security check counter in the entrance to the building.

31. The security guards demand that the people standing in line form two straight lines and any movement brings about screams and threats that entrance would be prohibited (Section 6 of Ms. Abas' affidavit). In addition, requests made by people with special needs, who cannot stand up for extended periods of time, go unanswered, and they are forced to stand in the long and crowded line, like everyone else (Section 10 of Ms. Abas' affidavit, Section 5 of Petitioner 3's affidavit).
32. In general, it should be noted that the behavior of the security guards on the scene is unacceptable and they do not express any willingness to make the lives of those waiting any easier. On the contrary, in many cases, the security guards address the people standing in line rudely and disrespectfully in a manner that surely does not conform to basic criteria pertaining to people who provide services in a government office. This is how Petitioner 1 describes the security guards' attitude in her affidavit:

The security personnel and guards' treatment is degrading and insulting. The security guards treat the residents like garbage. You can't come closer, can't ask any questions, and any comment is accompanied by yelling.

33. The following is a passage from Petitioner 3's affidavit regarding the manner in which the security personnel treat those waiting under difficult conditions :

On more than one occasion I met elderly people lying on the floor as a result of the tiring wait, outside of the office. Mothers whose children were twisting and turning next to them, who were forced to continue waiting without any regard for their condition. Every time I visited the office (usually once or twice a month, at times more frequently) I asked the security guards outside to pay attention to the condition of the handicapped people and to bump them up the line. Time and time again the guards rejected my comments and requests. For example, when I came to the office on December 12 2011, I noticed an elderly woman sitting on her knees in line. I asked the guard to pay attention to her situation and to allow her in but he told me not to tell him how to do his job.

When I came to the office on November 16, 2011, there was a long line winding beyond the covered line. A woman turned to the security guard who was sitting in a type of watch tower outside, and told him that she had been

summoned to the Ministry of Interior with her baby (In some circumstances, in order to register a child, the applicant must bring the child along). The woman said that the baby was two weeks old and that waiting in a crowd with dozens of other people who were “stuck” to one another for hours might endanger her. The guard yelled back asking her if she had medical approval for the girl’s condition and added angrily that a sick baby could only enter with a doctor, I joined the woman in explaining that the baby was not sick, but since she was only a few days old it was dangerous for her to stand in a congested line – but the security guard did not listen to the explanations and refused to consider the woman’s request.

34. If the difficult waiting conditions were not enough, the security check on the premises is unprecedented and extraordinarily stringent and discriminatory compared to the checks conducted in different offices. The entire contents of each and every bag and wallet are checked very stringently and certain items (such as mirrors, tweezers, nail clippers etc.) are not allowed in and must be deposited with the security guards. In order to pass through the metal detectors one must remove one’s shoes and belt and in most cases earrings, headpins etc. as well. In some cases people undergo an additional search using a handheld metal detector. This is how Petitioner 1 describes the security checks at the office:

I work as a journalist. I have entered, inter alia, the President’s Residence, the Knesset and met with government ministers. Never have I undergone such stringent and humiliating security checks as those at the entrance to the population office. You are always required to remove your shoes, to empty your bag and to leave many objects with security. Even when entering the Jerusalem Central Bus Station and international border crossings there is no such security check. That proves that there is no security necessity.

35. Finishing the security check and entering the building is not an end to the wait. After entering the building, visitors to the office are required to wait in line for the information counter, where they receive a number for the appropriate department. They then wait in line for an office clerk. The wait is often very long, , but it is, at least in a closed, air-conditioned space with seating and access to restrooms. For example, Petitioner 1 left the office seven hours after arriving there!
36. As for the situation in other offices, we quote from the affidavit given by Petitioner 3, Att. Adi Lustigman:

I would like to mention that I visit Population Administration offices throughout Israel including those in Tel Aviv, Ramat Gan, Hertzelia, Rehovot, Ramle, Hadera, Rishon Letzion, and of course West Jerusalem. Nowhere have I encountered lines even similar to those at the entrance to the Population Administration Office!

37. Att. Diamond's discussion with Ms. Hagit Weiss, Manager of the East Jerusalem Population Office, as quoted in her affidavit dated June 16, 2011, indicates that the Respondents are aware of the difficult problems but delay solving it:

I called Ms. Weiss and explained the situation to her. Ms. Weiss said that she could not do anything, that it was very crowded outside, and that I should try and make my way to the turnstile. I told Ms. Weiss that I did not intend to push people and be aggressive, just so I could get to the entrance.

Ms. Weiss said that she was aware of the problem, and that she had no control over it, as the congestion is caused by the fact that the "Hiztyatvumat" machines [automated identification terminals] used by individuals receiving unemployment benefits to report, are located in the same building as the Ministry of Interior Office. Most of the people in line are unemployed individuals who have come to report to the employment office. Ms. Weiss said that the Ministry of Interior is always blamed for the long lines and the congestion in the entrance to the building, but the ministry was not responsible. Ms. Weiss said that the Ministry of Interior had expressed its willingness to pay for the placement of the "Hityatzvumat" machines outside of the building, in order to facilitate the line, but the Ministry of Employment was not cooperating. She told me that I should refer my complaints to the Ministry of Welfare and the employment office.

Exhaustion of Remedies

38. On March 14, 2007, Att. Yotam Ben Hillel of HaMoked: Center for the Defence of the Individual wrote to the Minister of Interior regarding the unacceptable congestion in the entrance to the office. The letter emphasized the fact that the line to the office is extremely long and goes beyond the covered area, so that those waiting are exposed to the sun or the cold; the congestion within the turnstiles and the danger inherent in the manner in which they are operated as

well as the humiliating treatment on the part of the security guards. The letter also noted that those visiting the Population Office stand in the same line as those visiting the Employment Office, a fact which increases the congestion and the crowding in the area.

A copy of HaMoked's letter to the Minister of Interior dated March 14, 2007 is attached and marked **P/8**.

39. On March 28, 2007, a reminder was sent to the Minister of Interior

A copy of the reminder dated March 28, 2007 is attached and marked **P/9**.

40. On March 26, 2007 the response of the Senior Vice President for Administration and Human Resources to Respondent 1 was written. This letter stated that: "The opening of the Employment Office did indeed cause crowd pressure and we identified this problem upon its emergence." According to the Vice President, the office is working to find a suitable solution and hopes the situation will change within a number of weeks.

A copy of Respondent 1's response dated March 26, 2007 is attached and marked **P/10**.

41. On April 10, 2007 an additional response from the Assistant to Respondent 1's General Manager was received. The response stated that the office was aware of the problem and that senior officials had visited the site. According to the assistant, the source of the problems was not under the control of the ministry and the ministry was employing all means in its possession, including meeting with the Government Housing Administration.

42. A copy of Respondent 1's response dated April 10, 2007 is attached and marked **P/11**. On June 4, 2007 HaMoked contacted Respondent 1 once again and noted that the situation remained as it was – congestion, crowding and long lines outside of the office.

HaMoked's letter to Respondent 1 dated June 4 2007 is attached and marked **P/12**.

43. Respondent 1's response stating that the lines were a result of the location of the automated identification terminals ("The Hityaztvumat" machines) belonging to the Employment Service inside the building rather than outside. According to the Minister of Interior, the automated identification terminals can and must be placed outside the building, so that the visitors to the employment office would not wait in the security check line at the entrance to the building. A letter from the General Manager of the Employment Service to Respondent 1 stating that the location of the automated identification terminals does not constitute a problem and that they should not be removed from the building, was attached to the letter. As stated above, Respondent 1 disagrees with this statement.

Respondent 1's letter dated June 19, 2007 is attached and marked **P/13**.

44. On September 17, 2007, HaMoked wrote the General Manager of Respondent 1 and inquired if a solution has finally been found for the problem and if not, how the office intended to solve the problem.

HaMoked's letter to Respondent 1 dated September 17, 2007 is attached and marked **P/14**.

45. On October 16, 2007, a response on the part of the General Manager of Respondent 1, repeating the position of the Ministry of Interior whereby moving the automated identification terminals out of the building would improve the conditions substantially, was given. He recommended that HaMoked contact the Employment Service as well.

A copy of Respondent 1's letter dated October 16, 2007 is attached and marked **P/15**.

46. On December 24, 2007, HaMoked contacted the General Manager of Respondent 1 once again, noting that there was still no solution for the problem and demanding that the situation be rectified immediately.

A copy of HaMoked's letter to the General Manager of Respondent 1 dated December 24, 2007 is attached and marked **P/16**.

47. On December 27, 2007, the response of the General Manager of Respondent 1 stating that no progress had been made on the subject was given. In his words, Government Housing which is subordinate to the Accountant General's Department in the Ministry of Finance is the body that decided to move the Employment Office to the building and it decided where to place the automated identification terminals. The General Manager of Respondent 1 added that he contacted the Employment Office, but the options for action at his disposal beyond that were limited.

A copy of Respondent 1's letter dated December 27 2007 is attached and marked **P/17**.

48. On August 26, 2009, HaMoked contacted Mr. Avi Lekach, Senior Department Manager, Population Authority Office, Respondent 1. In its letter, HaMoked noted that despite the promises nothing had been done and the crowding, congestion, and disgraceful treatment at the entrance to the office continued.

A copy of HaMoked's letter to Respondent 1 dated August 26, 2009 is attached and marked **P/18**.

49. HaMoked sent 5 reminders in an effort to receive a response.

Copies of the reminders dated December 21, 2009; March 1, 2010; April 1, 2010; April 28, 2010 and May, 24 2010 are attached and marked **P/19A-E**.

50. On June 3, 2010 a response on the part of Ms. Hagit Weiss, Manager of the Population Authority Office in East Jerusalem was sent. In her words, **“The Congestion at the entrance to the office is a result of the placement of the automated identification terminals inside the building as well as the increase in the number of job seekers who have been coming to the employment office recently.”** She added that **“The Employment Service is responsible for moving the terminals out of the building and we believe that it will do so soon”**.

A copy of the East Jerusalem Office Manager’s letter on behalf of Respondent 1 is attached and marked **P/20**.

51. On June 21, 2011 HaMoked contacted the three Respondents in this petition: the Senior Division Manager, Population Authority at the Ministry of Interior, the General Manager of the Employment Service and the Supervisor of the Government Housing Administration at the Ministry of Finance, regarding this matter.

A copy of the letter to Respondent 1 is attached and marked **P/21**.

A copy of the letter to Respondent 2 is attached and marked **P/22**.

A copy of the letter to Respondent 3 is attached and marked **P/23**.

52. On August 3, 2011 a reminder was sent to the three Respondents.

A copy of the reminder is attached and marked **P/24**.

53. On September 6, 2011, a response on the part of the Israel Employment Service was sent. In their opinion, removing the automated identification terminals would minimize the congestion but would not solve the problem. Nonetheless, following a visit to the site by the relevant authorities, the General Manager of the Employment Service decided to move the terminals out of the building. However, despite his appeal to the Population Authority, approval for executing the changes had yet to be received. Respondent 1’s letter to officials in his office dated July 14, 2011, in which he requested immediate approval for the changes that had been decided upon was attached to this letter. A letter from the Vice President of the Employment Service to Respondent 1 dated August 16, 2011 requesting immediate steps be taken to approve the changes so that they could be implemented was also attached.

A copy of the letter from the Employment Service dated September 6, 2011 including attachments is attached and marked **P/25**.

54. On September 19, 2011 HaMoked sent a letter to Respondent 1 and asked to take immediate steps in order to implement the changes in the location of the automated identification terminals which was agreed upon with the Employment Service.

A copy of HaMoked's letter to Respondent 1 dated September 19, 2011 is attached and marked **P/26**.

55. On November 8, 2011 a reminder was sent to Respondent 1.

A copy of the reminder is attached and marked **P/27**.

56. No response was received. Therefore, the Petitioners have no recourse but to appeal to this Honorable Court.

The Legal Argument

Administrative Fairness and Soundness

57. It is a fundamental principle that an administrative authority, acting on behalf of the state, must act in a sound, fair and reasonable manner towards any person to whom it grants services.

A corner stone of Administrative Law is that the administrative authority, as a public fiduciary, must act fairly. See, for example, HJC 840/79, 830/79,860 Center of Contractors and Builders in Israel et al. v. Government of Israel et al. [20], pages 745 – 746. The duty of fairness that applies to the authority, is first and foremost, toward the public. This is a duty of a fiduciary towards a beneficiary. However, in practice, as the public is comprised of human beings, the duty does not apply only to the public as an abstract body, but towards every human being.

It has been stated on more than one occasion that the duty of fairness that applies to the administrative authority is towards the citizen. It may be phrased in this way, but it should be noted that the citizen, in this regard, is a human being, including a human being who is not a citizen, as well as an association of individuals, including a corporation (HCJ 164/97 Contram Ltd. v. Ministry of Finance, Department of Customs and VAT et. al., IsrSC 52(1) paragraph 22 of the opinion of Justice Zamir).

58. The conditions under which individuals wait and the accessibility of the administration's reception offices are an inseparable part of the service provided by the administration and it is obligated to operate them in a reasonable, proper, considerate, and facilitating manner to the extent possible, within the framework of the rules of good governance. There is no need to explain why an authority that forces those who are in need of its essential services to wait for an extended period of time under the conditions described above in the factual chapter, is not acting fairly, properly and reasonably.
59. Respondents are breaching their administrative duty to provide essential services as a right rather than an act of grace, with a wait whose length and conditions are reasonable. Respondents are violating their administrative duties by not preventing individuals seeking their services from waiting in line in humiliating and intolerable congestion, at times while exposed to harsh weather conditions, with no possibility of sitting down, or relieving one's self and while abandoning them to the whims and arbitrary decisions of the security guards.
60. Similar comments were made not long ago by the Honorable President (Ret.) Barak in the verdict given in the Jabra petition, which is the second petition dealing with the condition in the previous office:

As stated above, there is no dispute, that the conditions at the reception area of the Population Administration Office in East Jerusalem are difficult. In our opinion, these conditions are extremely unreasonable. The services provided to the residents in the office are essential services, which relate to the regulation of their status in Israel, to their ability to exit and enter Israel, as well as to other basic rights granted to citizens and residents of Israel. It should be noted that the services provided in the office will at times demand the arrival of elderly people, babies and children as well. The public has a right to receive these services under proper conditions and within a reasonable period of time. The conditions at the reception area at the office cast a terrible burden on the residents of East Jerusalem when coming to receive these essential services. Exposing the public to long waits outside, with no proper physical conditions, extends beyond what is reasonable and may amount to an indirect violation of the residents' rights.

Infringement Upon the Right to Dignity and Equality

61. Section 2 of **Basic Law: Human Dignity and Liberty** states that: **“There shall be no violation of the life, body or dignity of any person as such”**. The long wait at the office under conditions of congestion, lack of air, lack of control over entry and exit, lack of seating and restroom facilities, infringes upon the rights of residents visiting the office. It reflects a degrading attitude on the part of service providers and their perception of those receiving the services as a nuisance.
62. We are not require deliberations or interpretations that will determine if the infringement resulting from the waiting conditions in the office constitutes an infringement upon the right to human dignity enumerated in Basic Law: Human Dignity and Liberty, as this is “classic”, primary infringement upon human dignity (See: Aharon Barak, **Interpretation in Law: Constitutional Interpretation**, Nevo Publishing House, P. 413). It is an infringement relating to the very humanity of a person exposed to degrading treatment, which is undoubtedly included in the Basic Law.
63. In her essay Yehudit Karp describes “human dignity” as circles of content which grow wider, of which the “narrow internal circle is the circle of immediate, natural, and simple relevance of the word dignity, which is the opposite of desecration, humiliation, and embarrassment which infringe upon human dignity (Yehudit Karp, A Few Questions on Dignity, **Mishpatim** 25, 1995, P. 136).
64. In terms of the relationship between the individual and governmental authorities, good governance requires the authority to view citizens or residents as individual who possess self dignity and to provide them with service in a manner which protects their dignity. “The right to human dignity casts upon the authorities a (negative) duty not to infringe upon human dignity and a (positive) duty to defend it. Both the passive aspect and the active aspect are different parts of the whole, which is the right to dignity (HCJ 6427/02 **The Movement for Quality of Government in Israel v. The Knesset** IsrSC 61(1) paragraph 1 of the opinion of Hon’ President (Ret.) Barak).
65. Furthermore, collective discrimination, similarly to sexual discrimination or racial discrimination, is degrading in a manner that compromises harms equality, which is part of the constitutional right to human dignity (See for example HCJ 7052/03 **Adalah v. Minister of Interior** IsrSC 61(2), paragraph 39 of the opinion of President (Ret.) Barak’s remarks.

Such discrimination is based on attributing an inferior status to the victim of discrimination, a status that is a consequence of his supposedly inferior nature... the Basic Law protects against a violation of the principle of

equality when the violation causes degradation, i.e., an insult to the dignity of a human being as a human being...

(HCJ 4541/94 *Alice Miller v. Minister of Defense*, IsrSC 49(4) 94, P. 132 -133).

...An infringement upon dignity manifests itself not only in defamation or insults and swearing, but also in discrimination and deprivation, bias and racial or degrading treatment. Protection of human dignity manifests itself not only in prohibiting defamation, but also in ensuring our equality in rights and opportunities, and by preventing any discrimination, whether on the basis of sex, religion, race, language, opinion, political or social affiliation, family relations, ethnic origin, property or education” (H. Cohen, *The Values of a Jewish Democratic State – A Study of Basic Law: Human Dignity and Liberty Hapraklit, Jubilee Book* (1994), p. 32)

66. The following is stipulated in the **Prohibition on Discrimination in Products, Services, and Entry into Places of Entertainment and Public Places Law, 5761 - 2000**, which also applies to the State:

Whoever supplies a product or a public service or operates a public place, shall not discriminate in supplying the product or the public service, in allowing entrance into the public area or in supplying services in the public area on the basis of race, religion, ethnicity, nationality, country of origin, sex, sexual orientation, opinion, political affiliation, personal status or parenthood.

67. There is no option but to consider the waiting conditions in the Interior Ministry's Population Administration Office as discrimination based on group affiliation, which infringes upon the principle of equality and the right to dignity.
68. It is well known and may be considered within the realms of judicial cognizance, that the waiting conditions in the Population Administration Office in West Jerusalem, which serves the Jewish population, are reasonable and allow easy access for those seeking this essential service. Furthermore, no additional administrative authority provides services in the office building in West Jerusalem contrary to the office building in East Jerusalem, which, as stated above, serves those visiting the Employment Service as well. This is the situation despite the fact that residents of East Jerusalem require the services of

the Population Administration at a much higher frequency than residents of West Jerusalem.

69. Other than the infringement upon dignity and equality, the extended wait in difficult physical conditions also infringes upon the residents' right to health, family life, freedom of movement and other rights, as the exercise of these rights is conditional upon receiving services in the Population Office.

Conclusion

70. The conditions while waiting for service at the Population Administration Office in East Jerusalem, which provides essential services to the residents of East Jerusalem are difficult, unreasonable and infringe upon the right to equality as well as additional rights afforded to those visiting the office.
71. The Respondents are implementing their authority in a manner which is contrary to the principles of good governance and contrary to their obligations according to administrative law.
72. Even if taking into account the need to conduct security checks before entering the office, the harm to the visitors to the office, who are forced to wait in conditions of congestion and degradation is excessively disproportionate, and ignores the basic rights afforded to those visiting the office.
73. In light of the above said, the Honorable Court is requested to grant an Order Nisi as requested, and after receiving the Respondent's response, make it absolute. In addition, the Court is requested to order the Respondents to pay the Petitioners' costs and attorney fees.

5 January 2012

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